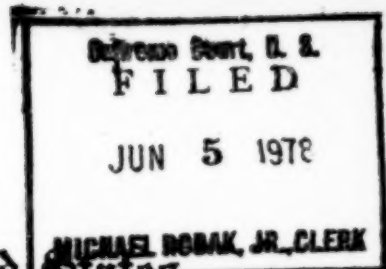


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In the
Supreme Court of the United States

October Term 1977
No. 8, Original of
October Term 1965

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION
DISTRICT, IMPERIAL IRRIGATION DISTRICT, COA-
CHELLA VALLEY COUNTY WATER DISTRICT, THE
METROPOLITAN WATER DISTRICT OF SOUTHERN
CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN
DIEGO, and COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

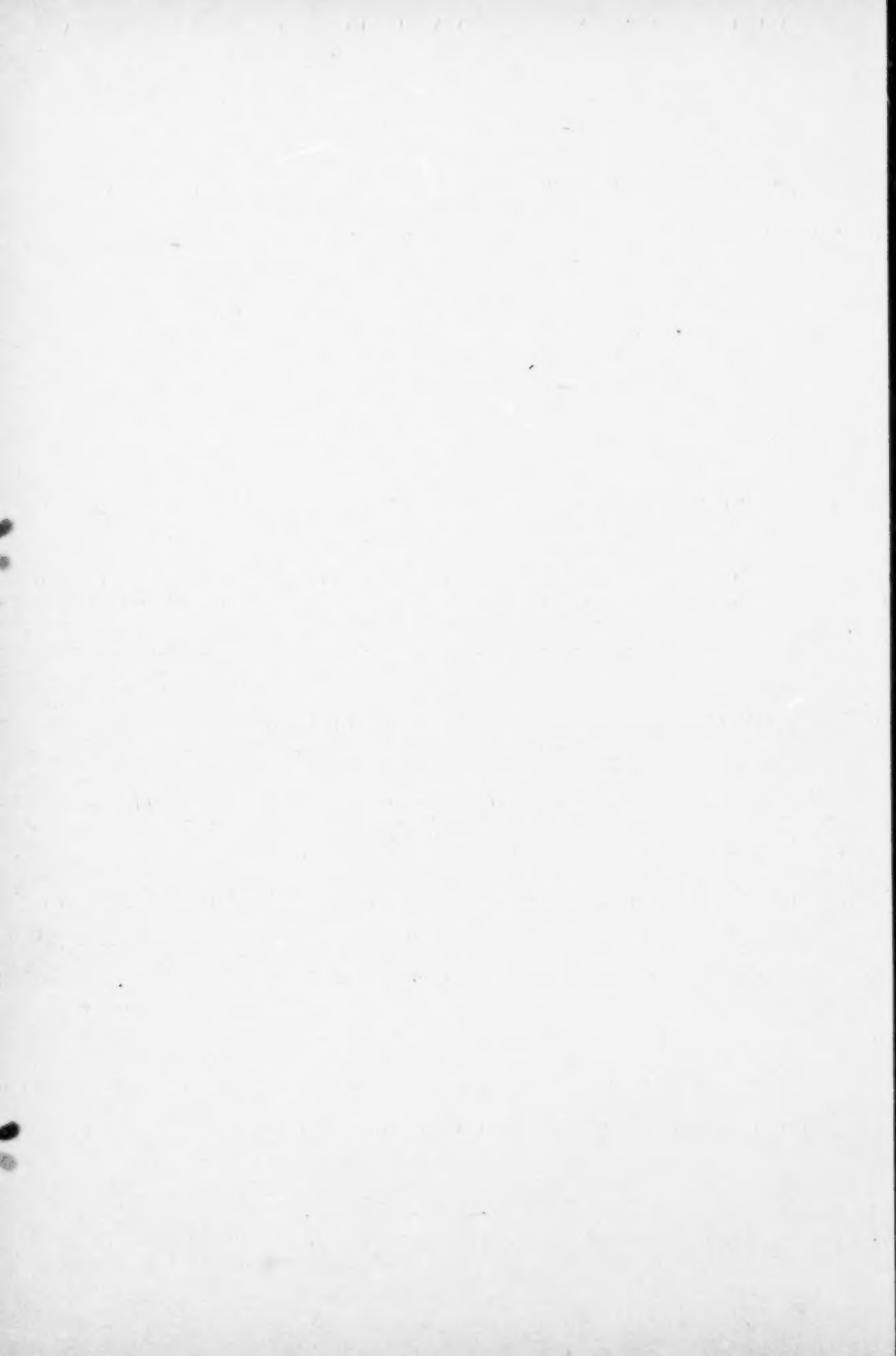
Intervenors,

STATE OF NEW MEXICO and STATE OF UTAH,

Impleaded Defendants.

RESPONSE OF THE STATE OF ARIZONA TO THE
MOTION OF THE COLORADO RIVER INDIAN TRIBES
AND THE COCOPAH INDIAN TRIBE FOR LEAVE TO
INTERVENE AND PETITION OF INTERVENTION.

STATE OF ARIZONA
By Ralph Hunsaker
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Arizona Water Commission
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(602) 263-3888



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STATE OF ARIZONA,

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v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

Intervenors,

STATE OF NEW MEXICO and STATE OF UTAH,

Impleaded Defendants.

RESPONSE OF THE STATE OF ARIZONA TO THE MOTION OF THE COLORADO RIVER INDIAN TRIBES AND THE COCOPAH INDIAN TRIBE FOR LEAVE TO INTERVENE AND PETITION OF INTERVENTION.

THE STATE OF ARIZONA (hereinafter referred to as the "State of Arizona" or "Arizona") hereby responds to the

Motion of the Colorado River Indian Tribes and the Cocopah Indian Tribe (hereinafter referred to as the "Applicant Tribes") for Leave to Intervene, dated April 10, 1978.

I

ADOPTION OF THE RESPONSE OF THE STATES OF CALIFORNIA AND NEVADA, THE COACHELLA VALLEY COUNTY WATER DISTRICT, AND THE IMPERIAL IRRIGATION DISTRICT TO THE MOTION OF THE APPLICANT TRIBES TO INTERVENE

The State of Arizona concurs with and adopts the response filed by the States of California and Nevada, and the Coachella Valley County Water District and the Imperial Irrigation District to the Motion for Leave to Intervene by the Applicant Tribes, except as hereinafter expressly stated.

Arizona cannot concur in the position of the States of California, Nevada, the Coachella Valley County Water District and the Imperial Irrigation District, wherein these responding parties indicate that they would consent to intervention.

The State of Arizona concurs that a State is immune from suit in the Federal Courts without its consent. It further concurs in the position that this State, together with the other mentioned respondents to this Motion, have declined to consent to and oppose intervention by the Chemehuevi, Fort Mojave and Quechan Indian Tribes. The State of Arizona concurs that the intervention by the Applicant Tribes must be permissive and not as a matter of right.

II

ARIZONA'S POSITION RELATIVE TO INTERVENTION

It is the position of the State of Arizona that in all proceedings before this Court, in the subject litigation, the United States representation of the Applicant Tribes has been adequate and zealous. It, therefore, does not seem necessary or justified for the Court to allow intervention by the Applicant Tribes through private counsel. Seeing no reasonable justification for the claim that the Applicant Tribes have not been adequately represented by the United States, as Trustee for the Applicant Tribes, Arizona cannot accede to a position which would automatically grant its consent to this intervention in the event that the United States did not support or at least did not oppose intervention.

As to the portion of the response filed by the States of California and Nevada, the Coachella Valley Water District and the Imperial Irrigation District, which states that those respondents will consent to intervention or at least not oppose intervention, the State of Arizona cannot concur.

The State of Arizona would further direct the Court's attention to the fact that in large part the claims sought to be asserted by the applicant tribes depend for their validity upon the determination of land title disputes. The original jurisdiction of this Court was not sought to determine land title disputes. Once the land title disputes have been finalized in lower court decisions then the Court can, through Articles II(D)(5) and (9) of the Decree, make such other orders as are just relative to water rights which may pertain to any additional land the Applicant Tribes may acquire. After a final adjudication of the land title disputes, the United

States may then present to this Court for its consideration the water rights which may pertain to such land.

The State of Arizona feels that an orderly way for the Applicant Tribes to proceed is to first finalize all claims they wish to make for new land and then through the United States seek from this Court through Article II(D)(5) and (9) of the Decree entered by this Court an appropriate order. For these reasons the State of Arizona does not consent to intervention by these tribes at this time even though Article II(D)(5) and (9) would be an appropriate vehicle for the United States to assert any additional claims to water which these tribes feel are just.

In the event that the Court feels intervention to be appropriate, the State of Arizona would strongly urge that the three conditions, indicated in the response of the States of California, Nevada, Coachella Valley County Water District and the Imperial Irrigation District, be imposed to prevent delay and prejudice.

Arizona feels that whatever the Court decides to do on the Applicant Tribes' Motion, that no reason exists to delay the entry of a Supplemental Decree by this Court to implement Article VI of the Decree entered May 9, 1964. The proposed Supplemental Decree not only protects Indian claims to Present Perfected Rights, but confers benefits to the Applicant Tribes and the Fort Mojave Indian Tribe, the Chemehuevi Indian Tribe and the Quechan Tribe of the Fort Yuma Indian Reservations.

CONCLUSION

The State of Arizona concurs in the responding briefs filed by the States of California and Nevada and the

Coachella Valley County Water District and the Imperial Irrigation District, except that it does not consent to intervention in the event that the United States determines that it will support or not oppose intervention. It further urges that this Court should determine any applicable water rights which may apply to additional lands acquired by the Applicant Tribes after final adjudication of land title disputes has been achieved.

If intervention is granted, the responding party requests at least an additional 90 days to reply to the Petition of Intervention.

DATED this 5th day of June, 1978.

STATE OF ARIZONA

By Ralph E. Hunsaker
Chief Counsel,
Arizona Water Commission